

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ARTHUR STANTON, on behalf of
himself and others similarly situated,

Plaintiff,

v.

THE NCR PENSION PLAN, et al.

Defendants.

CIVIL ACTION NO. 1:17-cv-02309-MLB

**DEFENDANTS' PARTIAL MOTION TO DISMISS
AND STRIKE PLAINTIFF'S AMENDED COMPLAINT**

Defendants move to dismiss Counts II and IV of Plaintiff's Amended Complaint pursuant to Fed. R. Civ. P. 8(a), 12(b)(1) and 12(b)(6). Defendants also move to strike sections of Plaintiff's Amended Complaint that fall outside of the Court's Order.

As discussed more fully in Defendants' concurrently-filed Memorandum In Support, in its Order on Defendants' Motion to Dismiss Plaintiff's Complaint, the Court dismissed Counts II and IV, holding that Plaintiff "lacks standing to bring his fiduciary duty claims." (Doc. 26, p. 17). The Court recognized the Plan at issue is a defined-benefit plan and, in such a plan, losses to the Plan do not necessarily injure a participant. (*Id.*).

Accordingly, because Plaintiff had not alleged a sufficient injury-in-fact, Plaintiff had no constitutional standing to assert a breach of fiduciary duty. (Doc. 26, pp. 19-20). Nevertheless, the Court allowed Plaintiff to file an amended complaint *only* “if he believes he has standing under the terms set forth above.” (*Id.*, p. 20).

Instead of adhering to the Court’s Order, Plaintiff now asserts three new subclasses having nothing to do with the narrow basis of potentially remedying his Count II and IV breach of fiduciary duty claims. (Amended Complaint, ¶¶ 12, 66, 67, Overall Prayer For Relief). Further, the additional allegations he now presents do not establish the requisite injury-in-fact necessary to save Counts II and IV, do not assert a cognizable breach of fiduciary duty claim and are duplicative of Count I of his Complaint. (Amended Complaint, ¶¶ 77-87, 95-118). For these reasons, Defendants’ present motion must be granted.

This motion is based upon the concurrently-filed memorandum in support and all exhibits thereto, all pleadings and records on file in this action, and upon such other and further evidence and argument as may be presented at or before any hearing on this matter.

CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(D), the undersigned counsel for Defendant certifies that the pleading has been prepared in Times New Roman, 14-point type, which is one of the font and point selections approved by the Court in Local Rule 5.1(B).

Respectfully submitted this 30th day of December, 2019.

FORD & HARRISON LLP

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 30, 2019, he electronically filed the foregoing **DEFENDANTS' PARTIAL MOTION TO DISMISS AND STRIKE PLAINTIFF'S AMENDED COMPLAINT** with the Clerk of Court using the CM/ECF System which will automatically send e-mail notification of such filing to the following attorney of record:

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